

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                |   |                          |
|--------------------------------|---|--------------------------|
| HOWARD P. STRAIN,              | ) |                          |
|                                | ) |                          |
| Plaintiff,                     | ) | Civil Action No. 04-1581 |
|                                | ) |                          |
| v.                             | ) |                          |
|                                | ) |                          |
| BOROUGH OF SHARPSBURG,         | ) | Judge Lancaster          |
| PENNSYLVANIA, a Municipal      | ) | Magistrate Judge Caiazza |
| Entity, and RICHARD C. PANZA,  | ) |                          |
| JOSEPH P. PANZA, LARRY         | ) |                          |
| STELITANO, EILEEN RAPINO,      | ) |                          |
| VINCENT F. SACCO, ALBERT       | ) |                          |
| "PAT" ASTORINO, MARIO FERRARO, | ) |                          |
| ROXANNE MAGNELLI, AND ROBERT   | ) |                          |
| STAPF, in their official and   | ) |                          |
| individual capacities,         | ) |                          |
|                                | ) |                          |
| Defendants.                    | ) |                          |

**MEMORANDUM ORDER**

On October 17, 2004 this case was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On April 26, 2007 the magistrate judge issued an Amended Report and Recommendation (Doc. 116) recommending that the District Court grant in part and deny in part the Defendants' Motion for Summary Judgment (Doc. 64), and that it deny the Plaintiff's Motion for Partial Summary Judgment (Doc. 60). Service of the Amended Report and Recommendation was made on the parties. Objections were filed by the Plaintiff on April 26, 2007. (Doc. 117 ). Supplemental Objections were filed by the Plaintiff on May 6, 2007 (Doc. 119). Objections were filed by the Defendants on May 11, 2007 (Doc 120). The Plaintiff's Response to the Defendants' Objections was filed on May 18, 2007 (Doc. 121). The Defendants' Response to the Plaintiff's

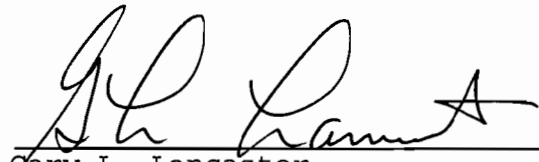
Objections was filed on May 21, 2007 (Doc. 122). After a de novo review of the pleadings and documents in the case, together with the Report and Recommendation and the Objections and Responses thereto, the following order is entered:

AND NOW, this 4<sup>th</sup> day of June, 2007, IT IS HEREBY ORDERED that the Defendants' Motion for Summary Judgment (Doc. 64) be granted in part and denied in part as follows:

1. The Motion is **GRANTED** as to Counts I, III, and V of the Second Amended Complaint;
2. The Motion is also **GRANTED** as to the individual Defendants with respect to claims made in Count II;
3. The Motion is **DENIED** with respect to the Borough of Sharpsburg as to claims made in Counts II, and with respect to all Defendants as to claims made in Count VI.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Partial Summary Judgment (Doc. 60) be **DENIED**.

The Amended Report and Recommendation of Magistrate Judge Caiazza dated April 26, 2007 (Doc. 116) is hereby adopted as the opinion of the court.

  
\_\_\_\_\_  
Gary L. Lancaster  
United States District Court Judge

cc:

Francis X. Caiazza  
U.S. Magistrate Judge

Counsel of Record  
Via Electronic Mail